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6 Reno, Nevada 89511  
7 Tel. (775) 284-1500  
Fax. (775) 284-1506

8 Attorneys for Plaintiff ERIC GILBERT

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 ERIC GILBERT; on behalf of himself, all  
12 others similarly situated,

13 Plaintiff,

14 v.

15 WELLS FARGO BANK, N.A. and DOES  
16 1-50, inclusive,

17 Defendant.  
18  
19

Case No.: 2:11-cv-01841-JCM-PAL

**ORDER APPROVING FLSA  
NOTICE**

20 The Court Orders as follows:

21 1. The Court adopts the attached Notice and Consent to Join form for use in this  
22 case that are attached as Exhibits "A" and "B" respectively.

23 2. Notice of this lawsuit will be sent to: All persons employed by Wells Fargo  
24 Bank, N.A. as Business Sales Officers, and/or any others similarly situated, from July 5, 2009  
25 to the present.

26 3. If it has not already done so, within ten (10) days of the date of this Order,  
27 Defendant Wells Fargo Bank, N.A. ("Wells Fargo") will provide to a third-party administrator  
28 of the parties' selection ("the Administrator") a list in computer-readable format of the (a) full

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1 name; (b) current home address or last known address; (c) telephone number; and (d) Social  
 2 Security number of each person who falls in the definition set forth in paragraph two (2) of this  
 3 Order. The Administrator will treat this information as confidential and will not disclose it to  
 4 Plaintiff's counsel or other third parties, except that contact information can be disclosed to  
 5 Plaintiff's counsel for those people who return Consent to Join forms.

6 4. Within twenty-eight (28) days of the date of this Order, the Administrator shall  
 7 mail a Notice, a Consent to Join form, and a postage pre-paid return envelope, to each person  
 8 identified on the list discussed in Paragraph 3 of this Order.

9 5. Any person who wishes to opt into this lawsuit must properly complete the  
 10 Consent to Join form and return it to the Administrator on or before sixty (60) days from the  
 11 date the notice is mailed. Any potential opt-in plaintiff whose Consent to Join is postmarked  
 12 after the date will not be able to participate in this lawsuit.

13 6. If any notice package is returned undeliverable, the Administrator will, within  
 14 fourteen days thereafter, use the Social Security number provided by Wells Fargo and attempt  
 15 to obtain an alternate address for that addressee and mail the notice package to that alternate  
 16 address. The Administrator will keep a record of: (a) the date on which any notice package is  
 17 returned undeliverable; (b) the date on which the undeliverable notice package is sent to an  
 18 alternate address; and (c) any updated addresses.

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1           7.       On each Friday after the initial mailing, the Administrator will e-mail to  
2 counsel for both parties PDF copies of all Consent to Join forms the Administrator received  
3 during that week. It will then be Plaintiff's counsel's responsibility to file the Consent to Join  
4 forms with the Court in a timely manner, and the statute of limitations will continue to run  
5 until the actual filing of the Consent to Join form.

6  
7 **IT IS SO ORDERED**

8  
9 DATED: August 9, 2012

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13 U.S. DISTRICT COURT JUDGE  
14 JAMES C. MAHAN  
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## **EXHIBIT A**

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17 1-50, inclusive,

18 Defendant.  
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Case No.: 2:11-cv-01841-JCM-PAL

**[PROPOSED] NOTICE OF PENDENCY OF  
FLSA COLLECTIVE ACTION LAWSUIT  
AGAINST WELLS FARGO BANK, N.A.**

20  
21 TO: All persons employed by Wells Fargo Bank, N.A. as Business Sales Officers, and/or any  
22 others similarly situated, from July 5, 2009 to the present.

23 RE: Fair Labor Standards Act lawsuit filed against Wells Fargo Bank, N.A.

24 **INTRODUCTION**

25 The purpose of this notice is to:

- 26 1) inform you of the existence of a lawsuit seeking recovery of unpaid overtime  
27 compensation under the Fair Labor Standards Act ("FLSA") in which you may  
28 be "similarly situated" to named-Plaintiff Eric Gilbert;

- 2) advise you of how your rights may be affected by this lawsuit; and
- 3) instruct you on the procedure for participating in this lawsuit, if you choose to do so.

This Notice is not an expression by the court of any opinion as to the merits of any claims or defenses asserted by any party to this action.

### **DESCRIPTION OF THE LAWSUIT**

On June 10, 2011, Plaintiff Eric Gilbert ("Plaintiff" or "Gilbert") filed a collective and class action complaint against Wells Fargo Bank N.A. ("Wells Fargo" or "Defendant"), on behalf of himself and all others similarly situated, for overtime compensation under the FLSA and the Nevada Labor Code. Specifically, Plaintiff claims that he and other persons employed as Wells Fargo Business Sales Officers ("BSOs") were incorrectly classified as "exempt" from overtime compensation under the FLSA and Nevada Labor Code. As a result of this alleged misclassification, Plaintiff contends that he and other BSOs are owed overtime compensation for all hours they worked over forty (40) hours per week. Plaintiff seeks back pay in an amount equal to the alleged unpaid wages and liquidated damages (double damages) resulting from Wells Fargo's alleged unlawful conduct.

Wells Fargo denies Plaintiff's claims and contends that Plaintiff and all other similarly situated BSOs were correctly classified as "exempt" under federal and state laws. Accordingly, Wells Fargo denies that it is liable for any damages resulting from this lawsuit.

### **DEFINITION OF WHO MAY PARTICIPATE IN THIS LAWSUIT**

To participate in this lawsuit, you must have been employed by Wells Fargo as a BSO at some point within three years from the date a request to "Consent to Join" the lawsuit is actually filed with the federal court (see enclosed form).

### **YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

If you fit the definition above, you may join this case by mailing the enclosed "Consent to Join" form to the third party administrator ("the Administrator") at the following address:

Simpluris, Inc.  
Tony Dang  
3176 Pullman Street, Suite 123  
Costa Mesa, CA 92626

If you want to join this lawsuit, you must send the form to the Administrator so that the attorneys prosecuting this case have time to file it with the Federal Court. If you do not return the "Consent to Join" form in time for it to be filed with the Federal Court, you may not be able to participate in this lawsuit.

### **EFFECT OF JOINING THIS SUIT**

If you choose to join this case, you will be bound by the decision of the court, whether it is favorable or unfavorable.

If you sign and return the "Consent to Join" form you are agreeing to:

- 1) designate the Plaintiff as your agent to make decisions on your behalf concerning this lawsuit;
- 2) the method and manner of conducting this lawsuit;
- 3) enter into an agreement with Plaintiff's counsel concerning attorney's fees and costs; and
- 4) all other matters pertaining to this lawsuit.

These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit. However, the court has retained jurisdiction to determine the reasonableness of any settlement with the Defendant, and any agreement concerning the reasonableness of any attorney's fees and costs that are to be paid to the Plaintiff's counsel.

The attorney for the Plaintiff class is being paid on a contingency fee basis, which means that if there is no recovery there will be no attorney's fee. If Plaintiff prevails in this litigation, the attorney for the class will request that the court either determine or approve the amount of attorney's fee and costs he is entitled to receive for his services.

### **LEGAL EFFECT IN NOT JOINING THIS SUIT**

You do not have to join this lawsuit. If you do not wish to participate in this lawsuit, then do nothing. If you choose not to join this lawsuit, you will not be affected by any judgment, dismissal, or settlement rendered in this lawsuit, whether favorable or unfavorable to the class. This means if Plaintiff wins, you will not collect any money from this lawsuit; if Plaintiff loses, you will not lose any claims you may or may not have under the FLSA. If you choose not to join this lawsuit you are free to file your own lawsuit.

### **STATUTE OF LIMITATIONS ON POTENTIAL CLAIMS**

The maximum period of time that you can collect unpaid wages under the FLSA is three (3) years from when you worked the hours, but were not paid time and one-half for overtime work. The statute of limitations continues to expire until you file with the court a written consent to join this lawsuit, or initiate your own lawsuit to collect your unpaid wages.

**NO RETALIATION PERMITTED**

Federal Law prohibits Wells Fargo from discharging you or in any other manner discriminating against you if you exercise your rights under the FLSA to seek compensation.

**YOUR IMMIGRATION STATUS DOES NOT MATTER IN THIS CASE**

You are entitled to be paid overtime wages and minimum wages under the FLSA, even if you are not otherwise legally entitled to work in the United States. Bringing a claim in the court for unpaid overtime wages is not a basis for you to be deported from the United States.

**YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this lawsuit and agree to be represented by the named Plaintiff through his attorney, your counsel in this action will be the attorneys at:

**Thierman Law Firm  
7287 Lakeside Drive  
Reno, NV 89511  
775-284-1500  
Email: laborlawyer@pacbell.net**

**FURTHER INFORMATION**

The court has taken no position in this case regarding the merits of the Plaintiff's claims or of the Defendant's defenses.

**DO NOT CONTACT THE CLERK OF THE COURT**

DATED:

\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE  
HON. JAMES MAHAN



## **EXHIBIT B**

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Case No.: 2:11-cv-01841-JCM-PAL

**CONSENT TO JOIN**

20  
21 I understand that this lawsuit has been brought under the Fair Labor Standards Act  
22 ("FLSA") and that it seeks unpaid overtime wages from Wells Fargo Bank, N.A ("Wells  
23 Fargo"). I have read the Notice accompanying this Consent to Join. I work, or have worked,  
for Wells Fargo as a Business Sales Officer at some point within the past three years.

24 **I CONSENT TO JOIN THIS LAWSUIT.** By signing this Consent to Join, I am  
25 agreeing to have Plaintiff Eric Gilbert act as my agent to make decisions on my behalf  
26 concerning the litigation and resolution of my FLSA claims. I am also agreeing to be  
27 represented by Mr. Gilbert's attorneys, (Mark Thierman, Esq., Thierman Law Firm, 7287  
Lakeside Drive, Reno, NV 89511), and any other attorneys with whom they may associate,  
unless I hire my own attorney.

I understand that I may participate in this lawsuit only if my completed, signed and dated "Consent to Join" form is postmarked on or before [60 days from the mailing date].

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State & Zip: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date signed: \_\_\_\_\_

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